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OFFICE OF PETITIONS

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In re Application of :
Pengfei ZHANG et al. :
Application No. 10/762,781 :
Filed: January 23, 2004 :
Attorney Docket No. 026661-004410US :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 13, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed July 03, 2006 which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 04, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an election; (2) the petition fee of \$750; and (3) an adequate statement of unintentional delay. Accordingly, the reply to the restriction requirement of July 03, 2006 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Petitioner, Michael L. Gencarella from Martine Penilla & Gencarella, LLP submitted \$1080 for an extension of time.

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An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See *In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$ 1080 extension of time fee submitted with the petition on February 13, 2007 was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

The Statement Under 37 CFR 3.73 (b) was not signed in compliance with 37 CFR 1.4 (d) (2) (ii), which requires the practitioner must supply his/her registration number either as part of the s-signature or immediately below or adjacent to the s-signature. Please provide a corrected statement in accordance with the rules.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

The application file is being referred to Technology Center AU 2825 for appropriate action on the concurrently filed election and amendment.



Denise Pothier
Petitions Examiner
Office of Petitions

cc: **MICHAEL L. GENCARELLA, LLP**
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